

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:95CR349 RWS
	)	
ANDY LAWUARY,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before me on Lawuary's Motion to Modify Sentence Under 18 U.S.C. § 3582 [#63]. The motion is without merit and will be denied.

Lawuary has moved for a reduction in his sentence pursuant to 18 U.S.C. § 3582. Lawuary argues that his sentence must be reduced because of the changes to the United States Sentencing Guidelines made in Amendment 591 to the Guidelines.

**STANDARD**

Under 18 U.S.C. § 3582(c):

The court may not modify a term of imprisonment once it has been imposed except that—

\* \* \*

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Under U.S.S.G. § 1B1.10:

(a) Where a defendant is serving a term of imprisonment, and the guideline range

applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, a reduction in the defendant's term of imprisonment is authorized under 18 U.S.C. § 3582(c)(2). If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) is not consistent with this policy statement and thus is not authorized.

\* \* \*

(c) Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, and 657.

### ANALYSIS

Lawuary is correct that Amendment 591 is listed in U.S.S.G. § 1B1.10 and is therefore subject to retroactive effect. However, the Guideline range that was applied Lawuary at sentencing was not affected by Amendment 591.

Lawuary pled guilty to violations of 21 U.S.C. § 841 and 18 U.S.C. § 922. The Guideline applicable to Lawuary in this case is U.S.S.G. § 2D1.1. The purpose of Amendment 591 was to clarify the application of U.S.S.G. § 2D2.2. Appendix C, Vol. III at 30. As a result, the applicable Guideline has not been lowered by the Sentencing Commission, and Lawuary does not qualify for a sentence reduction under 18 U.S.C. § 3582.

Accordingly,

**IT IS HEREBY ORDERED** that Lawuary's Motion to Modify Sentence Under 18 U.S.C. § 3582 [#63] is **DENIED**.

Dated this 16th day of December, 2005.



RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE